

**ORDINANCE NO. BL2019-\_\_\_\_\_**

**An ordinance amending Section 2.210.030 of the Metropolitan Code of Laws regarding disclosure requirements for economic and community development incentive grant agreements.**

WHEREAS, the Metropolitan Government of Nashville is authorized and empowered by the laws of the State of Tennessee to provide certain financial incentives to qualified private entities in furtherance of the goals of economic and community development; and

WHEREAS, the General Assembly of the State of Tennessee authorized the incorporation of public corporations known as "industrial development boards" in municipalities in the state of Tennessee pursuant to the Industrial Development Corporations Act ("Act"), currently codified at Tenn. Code Ann. §§ 7-53-101 through -316, to provide certain of these financial incentives; and

WHEREAS, the Industrial Development Corporations Act, at Chapter 209 of the Public Acts of 1955, states that the declared purpose of the Act is to do that which the state welfare demands and the state public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the state, and to promote the development of commercial, industrial, agricultural and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire state; and

WHEREAS, an industrial development board (IDB) has been duly organized and incorporated in Nashville and Davidson County, Tennessee in compliance with the Act, and Chapter 2.210 of the Metropolitan Code of Laws authorizes the metropolitan government to make economic and community development incentive grants to the IDB for qualified projects in order to encourage economic and community development within the boundaries of the metropolitan government; and

WHEREAS, it is fitting and proper that the Metropolitan Government adopt policies ensuring that local incentives disseminated by the IDB, upon approval of the Metropolitan Council, are distributed in a manner consistent with the declared purposes of industrial development boards; and

WHEREAS, Ordinance No. BL2017-983, approved December 19, 2017 and known as the "Do Better Bill", amended Section 2.210.030 of the Metropolitan Code of Laws to require recipients of incentive grants and Payments in Lieu of Taxes (PILOT) to provide certain information to the Metropolitan Council in order to allow initial and continuing assessments of entities and projects obtaining incentive development grants; and

WHEREAS, the implementation of Section 2.210.030 of the Metropolitan Code of Laws, as amended by Ordinance No. BL2017-983, requires further refinement to ensure adequate disclosures and verifiable reports are provided to the Metropolitan Council prior to the award of economic incentives; and

WHEREAS, the Metropolitan Government of Nashville and Davidson County wishes to increase the transparency of its incentive awards process while further reducing its exposure to liability stemming from projects and companies receiving public funds. Accordingly, the provisions contained within Section 2.210.030 of the Metropolitan Code of Laws should be drafted and interpreted to require reporting in the broadest, most inclusive sense.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL FOR THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE:

SECTION 1: That Section 2.210.030 of the Metropolitan Code of Laws is hereby amended by deleting it in its entirety and substituting in lieu thereof the following:

2.210.030 - Approval of economic and community development incentive grant agreements and PILOT agreements.

- A. This section applies to two types of financial incentives provided through the board: (1) economic and community incentive grants authorized by Section 2.210.020 and (2) payment-in-lieu-of-taxes (PILOT) incentives, authorized by Tenn. Code Ann. § 7-53-305. Any such grant or PILOT incentive must be memorialized by a written agreement. The proposed grant or PILOT incentive and the related agreement shall be submitted to the metropolitan county council for approval by resolution. Any such resolution must receive the affirmative votes of at least twenty-one members of the metropolitan county council in order for it to be approved. All such grant agreements authorized under Section 2.210.020 that are to be funded by the metropolitan government shall provide that the metropolitan government's financial obligations thereunder are subject to the annual appropriation of funds by the metropolitan council.
- B. To enable the metropolitan council's assessment of qualified projects and/or qualified companies, and to determine whether the public interest is served by the incentive under consideration, and to promote a transparent process, the mayor's office of economic and community development (ECD) shall solicit from qualified companies seeking a grant or PILOT incentive for a project, a project proposal that addresses each of the following:
  - 1. The type and number of jobs that will be created — both during and after construction, if any — by the qualified company or by the qualified project, including whether those jobs will be temporary or permanent, and the number of identified jobs that will be filled by Davidson County residents as well as the percentage of employees at the project expected to be relocated to Davidson County by the qualified company or qualified project.
  - 2. Establishment of a workforce plan disclosing:
    - (a) whether the qualified project, or the qualified company receiving an incentive grant, will involve use of temporary or staffing agencies, the Nashville Career Advancement Center, or other third parties for identifying, recruiting or referring job applicants;
    - (b) whether the individuals hired for the jobs identified will be employed by the company or by subcontractors or other third parties; and
    - (c) the wages and benefits offered for the identified jobs, and a comparison of those wages to the median wage levels in Davidson County for comparable positions. The disclosure of wage and benefits information shall adhere to the following format:
      - (i) For salaried positions, median annual salary levels and benefits shall be reported by standard occupational classification, as defined by the U.S. Department of Labor Bureau of Labor Statistics Occupation Codes (relative to the Davidson County, Tennessee metropolitan statistical area), compared to the salary levels in Davidson County for comparable positions; and
      - (ii) For wage positions, the hourly wage to be paid shall be reported by standard occupational classification, as defined by the U.S. Department of Labor Bureau of Labor

Statistics Occupation Codes (relative to the Davidson County, Tennessee metropolitan statistical area), including but not limited the following major occupation codes:

- Food Preparation and Serving Related Occupations (35-0000);
- Building and Grounds Cleaning and Maintenance Occupations (37-0000);
- Personal Care and Service Occupations (39-0000);
- Office and Administrative Support Occupations (43-0000);
- Construction and Extraction Occupations (47-0000);
- Production Occupations (51-0000); and
- Transportation and Material Moving Occupations (53-0000).

Each wage position shall be compared to the median annual wage available in Davidson County for the same occupation.

3. Whether the qualified project, or the qualified company receiving an incentive grant, will involve the use of apprentices from programs certified by the U.S. Department of Labor; and
4. The number and type, within the preceding seven years, of:
  - (a) all violations assessed by the U.S. Department of Labor — Occupational Safety and Health Administration and by the Tennessee Occupational Safety and Health Administration against the qualified company, and any contractor or subcontractor of the company retained on the qualified project or retained by the qualified company; and
  - (b) all employment or wage-related legal actions filed within federal or state courts against the qualified company, and any contractor or subcontractor of the company retained on the qualified project or retained by the qualified company, including but not limited legal actions asserting claims under The Fair Labor Standards Act of 1938, 29 U.S.C. § 201-219; The Family Medical Leave Act, 29 U.S.C. §2601, *et seq.*; Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981 (Section 1981); The Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.*, and 29 U.S.C. §6101, *et seq.*; The Americans with Disabilities Act of 1990, 42 U.S.C. §12101; The Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.* or the Education Amendments Act of 1972, 20 U.S.C. §1681, *et seq.*

The ECD shall present this project proposal to the metropolitan council prior to the council's vote on the incentive and related agreement. The project proposal shall be submitted on a form approved by the Metropolitan Council by resolution adopted by a majority of the Council membership. The qualified company's project proposal shall be incorporated into the agreement upon approval by the metropolitan council. The ECD shall further present the information required under this section B in any report required to be submitted to the metropolitan council under its workforce development program developed under Chapter 2.211.

- C. To enable the continued assessment of qualified projects and/or qualified companies, and to confirm that the public interest is being served by the award of the incentive, each qualified company receiving a grant or payment in lieu of taxes shall submit to the ECD quarterly reports demonstrating compliance with the agreement. Quarterly reports shall be submitted on a form approved by the Metropolitan Council by resolution adopted by a majority of the Council membership. With respect to grants awarded under Section 2.210.020, the ECD shall submit an annual report to the metropolitan council relaying compliance data, consistent with Section 2.190.010 of the Metropolitan Code. Annual reports shall be submitted on a form approved by the Metropolitan Council by resolution adopted by a majority of the Council membership. In the event such report shows that the qualified company failed to comply with its incentive agreement, the metropolitan council may, in its discretion upon the affirmative votes of at least twenty-one members, suspend the incentive prospectively or terminate the incentive agreement prospectively.

SECTION 2: That this Ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:

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Anthony Davis

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Burkley Allen

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Fabian Bedne  
Members of Council